

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**





ORIGINAL  
WITH PROOF  
OF SERVICE

76-1168

B  
12/5

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UNITED STATES COURT OF APPEALS

*for the*

SECOND CIRCUIT

---

UNITED STATES OF AMERICA,

Appellee,

-against-

GENE L. SIMMS and ROBERT GEFFEN,

Defendants-Appellants.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

BRIEF AND APPENDIX  
OF DEFENDANT-APPELLANT ROBERT GEFFEN

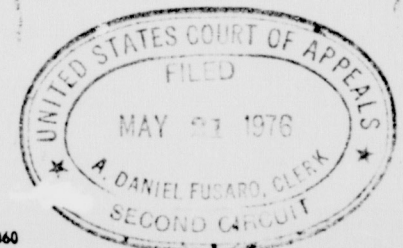
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(5515)



## TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities.-----	i
Statement of the Case -----	2
Preliminary Statement -----	2
The Defendant -----	3
Basis of the Charges -----	3
The Grand Jury -----	5
The Trial -----	6
Point I - By Berating Defense Counsel and by Telling the Jury that the Government Had Given Defense Counsel the Prior Statements of Important Government Witnesses Long Prior to Trial When in Fact They Had Not, The Presiding Judge Precluded Defendant From Receiving a Fair Trial. -----	7
Point II - Robert Geffen was Denied the Protection Afforded by the Fifth Amendment by Not Being Permitted to Read a Statement to the Grand Jury Detailing and Clarifying His Participation in the Events Under Investigation. -----	11
Conclusion -----	14
Table of Contents of Appendix-----	15



# TABLE OF AUTHORITIES

## Page

### Cases:

<u>Bollenbach v. United States</u> , 326 U.S. 607 (1967) -----	8
<u>Brown v. United States</u> , 359 U.S. 41 (1959) -----	13
<u>Dolan v. United States</u> , 218 F.2d 454 (8th Cir. 1955) ---	12
<u>Quercia v. United States</u> , 289 U.S. 466 (1933) -----	8
<u>Rea v. United States</u> , 350 U.S. 214 (1956) -----	13
<u>Starr v. United States</u> , 153 U.S. 614 (1894) -----	8
<u>United States v. Brumfield</u> , 85 F. Supp. 696 (W.D.La. 1949) -----	13
<u>United States v. Dionisio</u> , 401 U.S. 1 (1973)-----	11
<u>United States v. Fisher</u> , 455 F.2d 1101 (2d Cir. 1972) --	13
<u>United States v. Marcuso</u> , 485 F.2d 275 (2d Cir. 1973) --	12
<u>United States v. Persico</u> , 305 F.2d 534 (2d Cir. 1962) --	11
<u>United States v. Stevens</u> , 510 F.2d 1101 (5th Cir. 1975) -----	13

### Statutes and Constitutional Provisions

U.S. Const. amend. V -----	11
U.S. Const. amend. VI -----	11
18 U.S.C.2 -----	2
18 U.S.C.371 -----	2
18 U.S.C.645 -----	2

	<u>Page</u>
<u>Cases:</u>	
18 U.S.C. 2314 -----	2
18 U.S.C. 3500 -----	9,10
Fed. R. Crim. P.6 -----	11,12

Miscellaneous

ABA Standards Relating to the Prosecution Function and the Defense Function, Part III, §3.6 -----	13
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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

---

No. 76-1168

---

UNITED STATES OF AMERICA,  
Appellee,

v.

GENE L. SIMMS and ROBERT GEFFEN,  
Defendants-Appellants.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

---

BRIEF FOR DEFENDANT-APPELLANT  
ROBERT GEFFEN

---

ISSUES PRESENTED

1. Whether Robert Geffen was denied a fair trial as a result of the trial judge berating defense counsel and telling the jury that the government had given defense counsel the prior statements of important government witnesses long prior to trial when in fact they had not?



2. Whether Robert Geffen was denied his rights under the fifth amendment by not being permitted to read a statement to the grand jury detailing and clarifying his participation in the events under investigation?

#### STATEMENT OF THE CASE

##### Preliminary Statement

This appeal is from a judgment of conviction entered on March 23, 1976 in the United States District Court for the Southern District of New York (Pollack, J.) following a jury trial at which Robert Geffen was convicted of a total of nine counts of unlawfully making false statements to the United States Small Business Administration in violation of 18 U.S.C. 645(a); unlawfully transporting money taken by fraud, in interstate commerce, in violation of 18 U.S.C. 2314; aiding and abetting in the commission of the foregoing crimes in violation of 18 U.S.C. 2, and conspiring to commit the same in violation of 18 U.S.C. 371. Concurrent sentences of two years imprisonment with six months to be served and the remainder suspended and two years probation were imposed on each count.

Co-defendant Gene Simms was convicted of a total of eight counts of the same crimes and sentenced to concurrent terms of two years imprisonment and three years probation.

Co-defendant Ernest Kassab was acquitted of all charges.

### The Defendant

Robert Geffen has lived in Port Chester, New York with his family for over forty years. He was a practicing certified public accountant and active in community affairs. Prior to the commencement of the prosecution in the District Court, he had never been arrested or accused of a crime.

### Basis of the Charges

In June of 1972, Hurricane Agnes struck Pennsylvania and caused widespread flooding. To assist businesses which had suffered losses, the State of Pennsylvania made short term disaster recovery loans to flood damaged enterprises which were awaiting federal Small Business Administration Loans (T.30).<sup>1</sup>

One of the businesses that applied for a loan was the Stagg Holding Corporation, of White Plains, New York (T.33). Through two of its subsidiary corporations, Stagg of Huntingdon, Inc. and Huntingdon Associates, Stagg was constructing a shopping center in Huntingdon, Pennsylvania (T.91). The center was severely damaged and an application for a \$702,000 loan was submitted (T.43). An application for a Small Business Administration loan was also

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<sup>1</sup>

"T" references are to the trial transcript.



prepared and submitted.

The Pennsylvania loan, in the amount of \$664,000 was approved (T. 45). The S.B.A. application was subsequently withdrawn and no money was advanced.

The bills submitted in support of the loan applications were shown to have been fraudulent and Mr. Geffen was charged with having conspired to defraud the S.B.A. and Pennsylvania, with actually having done so, and with transporting the proceeds of the loan in interstate commerce.

The loan application procedure was overseen by A. Michael Stagg, the sole stockholder and chief operating officer of the Stagg companies (T.410). Also involved with the application were Frank DeAngelis, a Stagg construction supervisor who prepared an estimate of the damages (T.98), Albert Bisland, the Stagg secretary-treasurer (T.97), and Gene Simms, a corporate officer responsible for arranging financing necessary for the various Stagg projects.

Robert Geffen was a certified public accountant hired by the Stagg Holding Corporation. His function was to audit the books on an annual basis and to prepare a general financial statement of Stagg (T. 426).

At the request of A. Michael Stagg, Mr. Geffen assisted the corporate officers in presenting the necessary loan documents to the Pennsylvania Department of Commerce and the S.B.A. Mr.



Geffen had been in Montreal at a seminar when he received a phone call from Mr. Stagg, who had previously met with Charles Blankeship, directing him to contact Mr. Irving Yaverbaum of the Department of Commerce (T. 65).

The day before he was scheduled to meet with Mr. Yaverbaum in Harrisburg, Pennsylvania, Mr. Geffen was given a number of bills by Mr. Bisland and was told that they represented expenses incurred in repairing damage caused by the flood (T.379). Recognizing that it would be inappropriate to merely present the raw documents to Mr. Yaverbaum, Mr. Geffen prepared a schedule of the bills (T. 380). Copies of the schedule and bills were given to Mr. Yaverbaum the next day (T. 67).

#### The Grand Jury

Robert Geffen appeared before a United States grand jury convened in the Southern District of New York on October 16, 1973 and June 18, 1974 (T. 356).

At his June 18th appearance, Mr. Geffen brought a statement detailing and clarifying his participation in the events under investigation which he wanted to read to the grand jury (T. 395). Rather than permitting him to do so, Michael Mukasey, the Assistant United States Attorney who presented the case to the grand jury asked the foreman whether or not he wanted to have the statement read (T. 396). After consulting with the other jurors, the

foreman declined to permit Mr. Geffen to read the statement (T. 397). Mr. Geffen was later informed by Mr. Mukasey that he read the statement to the grand jury at a later date.

Defendant Geffen moved for dismissal of the indictment based upon his being denied the opportunity to read his statement to the grand jury. In the alternative he asked to be furnished with a transcript of Mr. Mukasey's reading of the statement. Said motion was denied on November 10, 1975 by Hon. Milton Pollack. (A -8 ).<sup>2</sup>

#### The Trial

The trial of the indictment lasted five days in January, 1976.

The government's evidence consisted primarily of the testimony of the aforementioned Messrs. Blankenship (T. 29), Yaverbaum (T. 62), DeAngelis (T. 79), Bisland (T. 89), and Marie Peduto, a Stagg bookkeeper (T. 228). In addition, many documents were admitted into evidence including the bills which were alleged to have been fraudulent (T. 68).

Through the testimony of Blankenship and Yaverbaum, the government established that Mr. Geffen had participated in the loan application process. Mr. DeAngelis testified as to the actual damage to the shopping center and Mr. Geffen's presence

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<sup>2</sup>

"A" references are to Appellant's Appendix on Appeal.



at a meeting with S.B.A. officials. These points were not contested by the defense.

By offering the testimony of Mr. Bisland and Mrs. Peduto, the government attempted to show that Mr. Geffen was aware that the bills submitted in support of the loan applications were fraudulent.

The long existing hostility towards Mr. Geffen by Bisland and Peduto was shown during the cross-examination of Mr. Simms (T. 512). Mr. Geffen's consistent position, as evidenced by his grand jury testimony read during the trial and the cross-examination of many of the witnesses, was that he did not prepare the supporting documents and was unaware of any discrepancies between the amounts shown on the bills and the actual expenses incurred. He was not acting as a C.P.A. when he assisted in the preparation of the loan applications. He conducted no audit but rather accepted all documents given him by his employers as accurate.

#### POINT I

BY BERATING DEFENSE COUNSEL AND BY TELLING THE JURY THAT THE GOVERNMENT HAD GIVEN DEFENSE COUNSEL THE PRIOR STATEMENTS OF IMPORTANT GOVERNMENT WITNESSES LONG PRIOR TO TRIAL WHEN IN FACT THEY HAD NOT, THE PRESIDING JUDGE PRECLUDED DEFENDANT FROM RECEIVING A FAIR TRIAL.

Firmly imbedded in the tradition of American jurisprudence is the proposition that a trial judge must at all

times be impartial. In the setting of a jury trial, it is crucial that the judge give the impression to those observing him that he is totally unbiased. Bollenbach v. United States, 326 U.S. 607, 612 (1946); Starr v. United States, 153 U.S. 614, 626 (1894).

The manner in which the judge responds to objections by counsel cannot possibly go unnoticed by a jury and cannot but affect their evaluation of the cause espoused by counsel. Because of the stature of the trial judge, any act by him which the jury perceives as indicating his disapproval or displeasure with the defendant or his counsel serves to severely prejudice the defendant. As the Supreme Court has noted when speaking of the demeanor of the trial judge, "his lightest word or intimation is received with deference and may prove controlling." Quercia v. United States, 289 U.S. 466, 470 (1933).

Since it is one of the few opportunities that an attorney has to speak directly to the jury, summation is a crucial component of a trial. Opposing counsel must be ever vigilant that their adversaries do not overstep the bounds of proper summation. Great care must be taken lest the jury be persuaded to accept a rendition of the facts not supported by the evidence or that improper inferences are suggested.

In an attempt to bolster the credibility of government witnesses, the Assistant United States Attorney told the jury during his summation that he had provided defense counsel with



their prior testimony so that it could be used for cross-examination purposes.

MR. MUKASEY: ...I am going to tell you a little bit, ladies and gentlemen, about the way trials work, and what the government's obligation is.

You heard these witnesses cross-examined with documents. Sometimes they are grand jury testimony, statements to the FBI, etc. Well, the government is required, under Title 18, Section 3500, to turn over all of the prior statements of its witnesses to the defendants so that they can use it for cross-examination, and that is fair. They ought to know what those people said on past occasions (A-16).

As the material had been provided only on the eve of the testimony of the respective witnesses, counsel for defendant Geffen properly objected to the inference that counsel had been afforded ample opportunity to study the transcripts of the prior proceedings. The objection was overruled by the Court.

MR. ROTHBLATT: Your honor, I object. That was handed to us on the eve of the testimony of the witnesses, and we didn't have time to study it.

MR. RUBINO: (Counsel for Defendant Kassab)  
Yes, your Honor.

THE COURT: Mr. Rothblatt and Mr. Rubino, I am surprised that you said that. I think that you have had those documents long prior to the trial.

MR. ROTHBLATT: Not the essential witnesses, no, your Honor. We were handed a batch of testimony.

THE COURT: You were handed the documents as required by law, and you have the documents (A-16 ).

The comments by the Court had a two-fold prejudicial effect on Mr. Geffen.

First, the jury was erroneously led to believe that counsel had had a significant amount of time to evaluate the prior testimony. This misconception was not eliminated by the Court stating that the documents were given as required by law since the jury was never told what 18 U.S.C. 3500 provides relative to delivery.

Secondly, and of farther reaching significance is that since the Court in effect accused defense counsel of misstating a material fact, his standing in the eyes of the jury was diminished. This rebuke by the Court cast all previous statements and examinations by counsel in a clouded light.

To compound the deleterious effect of the Court's statements, defense counsel were accused of deliberately interrupting the prosecutor's summation and were ordered to cease from interposing objections.

THE COURT: ...That is the end of this. I don't want you to interrupt the summation. You are deliberately interrupting the summation. I ask you to desist (A-17).

Of course, later objections would appear to the jury as being violations of the Court's order.



By demeaning and berating defense counsel, the Court could not have avoided prejudicing the jury, United States v. Persico, 305 F.2d 534, 537 (2d Cir. 1962) and defendant was thereby denied the constitutional right to a fair trial and the effective assistance of counsel. U.S. Const. amends. V, VI.

## POINT II

ROBERT GEFFEN WAS DENIED THE PROTECTION AFFORDED BY THE FIFTH AMENDMENT BY NOT BEING PERMITTED TO READ A STATEMENT TO THE GRAND JURY DETAILING AND CLARIFYING HIS PARTICIPATION IN THE EVENTS UNDER INVESTIGATION.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... "U.S. Const. amend. V.

By adopting the fifth amendment, the framers of the Constitution and Bill of Rights recognized the need to protect citizens against oppressive actions of the prosecutor or a court. United States v. Dionisio, 401, U.S. 1, 17 (1973) Congress has taken the basic protection afforded by the fifth amendment and particularized the method of empanelling the grand jury and the operating procedure to be followed. Fed. R. Crim. P. 6.

The rule provides, inter alia, that the grand jury

shall consist of between sixteen and twenty three members, (Rule 6[a]) and that an indictment may be founded only if at least twelve members vote to return a true bill. (Rule 6 [f]).

It is their function to investigate possible crimes against the sovereign and to determine whether an indictment is warranted. United States v. Mancuso, 485 F.2d 275 (2d Cir. 1973). It is of course assumed that the voting jurors are informed jurors. Any evidence which comes to their attention should be considered by the jurors. Dolan v. United States, 218 F.2d 454, 458 (8th Cir. 1955).

During his June 18, 1974, grand jury appearance, Mr. Geffen wanted to read a lengthy, carefully prepared statement that bore directly on the events being investigated. It did not merely reiterate testimony elicited from him and other witnesses by the Assistant United States Attorney but rather was a concise overview of the Stagg operation, the loan application, and Mr. Geffen's involvement. Through its foreman, the jury refused Mr. Geffen permission to read the statement.

The prejudice caused by the grand jury's refusal to permit Mr. Geffen to read the statement was not lessened by its taking the document and having the Assistant United States Attorney read it to them. Only Mr. Geffen could properly convey the import of his words. Not by dramatizing, but rather by fully understanding the meaning of his thoughts and by being available to answer the questions that were



bound to arise.

If the grand jury had been able to appreciate the totality of circumstances and the relationships between the participants, they would not have indicted Mr. Geffen.

Though it was the grand jury that decided not to hear the statement the Assistant United States Attorney, as the jury's legal advisor had a duty to instruct them to hear it. United States v. Brumfield, 85. F. Supp. 696, 704 (W.D. La. 1949).

The grand jury is not meant to be the private tool of a prosecutor, United States v. Fisher, 455 F.2d 1101, 1105 (2d Cir. 1972) and he should have taken steps to insure that the exculpatory evidence was properly before the jurors. ABA Standards Relating to the Prosecution Function and the Defense Function, Part III, §3.6.

The grand jury is an appendage of the court, Brown v. United States, 359 U.S. 41, 49 (1959), and exercises its power under the court's supervision. United States v. Stevens, 510 F.2d 1101, 1106 (5th Cir. 1975).

The Supreme Court has noted the authority of the courts to consider and decide questions of grand jury activities. Rea v. United States, 350 U.S. 214, 217 (1956)

The instant case provides a vehicle for this Court to expand the protection afforded grand jury witnesses. Permitting a witness to make an unfettered statement does not

limit the authority or function of the jurors or the prosecutor.

It merely insures that the grand jury's primary obligation which is to protect citizens from unwarranted charges is preserved.

#### CONCLUSION

By not being afforded the protection guaranteed by the fifth amendment, Robert Geffen was indicted and forced to stand trial. The prejudicial conduct of the trial judge then denied him a fair trial. For these reasons the judgment of conviction should be reversed and the indictment dismissed.

Respectfully submitted,

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(212) 787-7001

RONALD C. GOLDFARB

On the Brief

TABLE OF CONTENTS OF APPENDIX

	<u>Page</u>
Docket Entries -----	A-1
Index to Record on Appeal -----	A-5
Motion to Dismiss -----	A-8
Extract of Trial Transcript Concerning Delivery of 18 U.S.C. 3500 Material -----	A-16
Notice of Appeal -----	A-18



DOCKET ENTRIES

vs. GIFFEN, ROBERT

07 10 75 0971

JUDGE/Assigned Trial  
MASTROVITE 0848  
or Offense 0208 1  
Indictment or Disposition  
District Office

defendant

No. of 04  
Defendants

MAG. CASE NO. 1  
BAIL & RELEASE  
☐ Personal ☒ Unsecured  
AMT. Conditional  
Set (\$1000) ☐ 10-20-75  
Date ☐ 10-20-75  
☐ Bail Not Made  
☐ Bail Status Changed (See Docket)

CHARGES

U.S. CODE SECTION  
18:371  
15:645(a)  
18:1341  
18:2314  
18:1623

OFFENSES  
Consp. to defraud.  
False statements to SHA.  
Mail fraud.  
Interst. transp. of stolen prop.  
Perjury.

COUNTS  
1  
2  
5,6  
7-13  
15

U.S. Attorney or Asst.

Michael B. Mukasey, AUSA  
(212) 791-0041

Defense: CIA, FBI, Waived, Self, None, Other, FPD, LCO  
Rothblatt, Rothblatt, Seivas & Peskin, 232 West End Ave., N.Y.C.  
10022 Tele: (212) 787-7001

ORNEYS

ERVALS  
ATES

ARREST

INDICTMENT

ARRAIGNMENT

TRIAL

SENT

U.S. Custody  
Began on Above  
Charges

☐ High Risk  
Defn. &  
Date Design'd

Information ☐  
10-7-75  
☐ Waived  
☐ Superseding  
☐ Indict/Info

10-20-75  
1st Plea  
10-20-75  
Final Plea

Trial Set For  
☐ Not Guilty  
☐ Nolo  
☐ Guilty  
☐ Not Guilty  
☐ Nolo  
☐ Guilty

Voir Dire ☐  
Trial Began ☐ J  
☐ N  
Trial Ended

Disposition  
☐ Convicted ☐ On  
☐ Acquitted ☐ On  
☐ Dismissed ☐ On  
☒ Nolo/Discontin

☐ Prosecution Deferred

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
	Return			PRELIMINARY EXAMINATION OR REMOVAL HEARING		<input type="checkbox"/> Dismissed <input type="checkbox"/> Exo <input type="checkbox"/> Held for District Ct. <input type="checkbox"/> To Dis
Summons	Issued			Date Scheduled		
	Served			Date Held		
Arrest Warrant				<input type="checkbox"/> Waived <input type="checkbox"/> Intervening <input type="checkbox"/> Not Waived <input type="checkbox"/> Indictment		<input type="checkbox"/> Held to Answer to U.S. District Ct. AT:
COMPLAINT				Type No.	INITIAL/No.	Magistrate's Initials
OFFENSE (In Complaint)						

Show last names and suffix numbers of other defendants on same indictment/information

Stagg-1; Simms-2; Kassab-3.

DATE PROCEEDINGS

10-07-75 Filed indictment.  
10-20-75 Deft. (atty. present) Pleads not guilty. Bail set at \$10,000. P.R.B. Bail limits extended to the U.S. Deft. ordered photographed and fingerprinted. Case assigned to Judge Pollack as a related case. 74Cr1167. Pierce, J.  
10-20-75 Filed Personal Recognizance Bond \$10,000. (Unsecured)  
10-23-75 Filed notice of appearance of atty. Rothblatt, Rothblatt, Seivas & Peskin.  
11-3-75 Case set for trial on 1-12-75. Pollack, J.  
11-7-75 Filed deft.'s notice of motion re: b/p, copy and inspection dismissal ret: 11-10-75.  
11-11-75 Filed memo-end. on motion docketed 11-7-75. Motion denied. Pollack, J. m/n  
11-20-75 Filed Order that Ct. 14 of the indictment charging deft. Stagg with a viol. of 18 U.S.C. Sec. 1623 and Ct 15 of the indictment charging deft. Giffen with a viol. of 23 U.S.C. Sec. 1623 are severed for separate trial pur. Rule 14 F.R.C.P. Pollack, J. m/n  
12-15-75 Filed Govt. motion for w/h/c ad testificandum for

DISTRICT  
CLERK  
TRIED

BEST COPY AVAILABLE

DOCKET ENTRIES

IV. PROCEEDINGS (continued)		V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
11-28-76	Entered and filed nolle prosequi. Pollack, J.				
A-2					

A TRUE COPY  
 EDWARD F. BURCHARD, Clerk  
*[Signature]*  
 Deputy Clerk

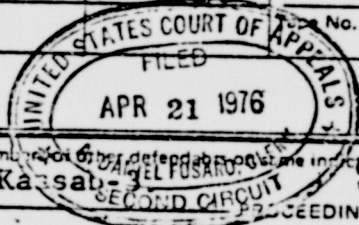


# DOCKET ENTRIES

Assigned Trial Magistrate 0848		U.S. vs. GEFEN, ROBERT	Day, Mo.   Year 30 12 75 126
0208 1 District Office		Defendant	No. 04 Defendants
CHARGES	U.S. CODE SECTION	OFFENSES	COUNTS
18:371		Consp. to make false statements.	1
15:645(a)		False statements to SBA.	2
18:2314		Interstate transp. of stolen prop.	3-9
U.S. Attorney or Asst. Michael B. Mukasey (212) 791-0046		Defense: U.S.A. Ret. Waived, Self, None, Other, FD, LCO Rothblatt, Roseblatt, Seijas & Peskin 232 West End Ave., N.Y.C.	
		MAG. CASE NO. 05 BAIL OR Denial <input type="checkbox"/> Per AMT - Condition Set (000) \$ Bail Not Made Bail Status Changed (See Docket)	

ARREST	INDICTMENT	PARRAIGNMENT	TRIAL	SE
10-07-75 or U.S. Custody Begin on Above Charges	Information <input type="checkbox"/> 12-30-75 Waived <input type="checkbox"/> Superseding Indict/Info <input checked="" type="checkbox"/> 12-30-75	01-12-76 1st Plea 01-12-76 Final Plea	Trial Set For Vair Dire <input type="checkbox"/> Trial Begin 01-12-76 Trial Ended 01-16-76	Disposition 05 Convicted <input checked="" type="checkbox"/> Acquitted <input type="checkbox"/> Dismissed <input type="checkbox"/> Noted/Discon <input type="checkbox"/>

Search Warrant	Issued	DATE	INITIAL/No.	INITIAL APPEARANCE	INITIAL/No.	OUTCOME
Summons	Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING		<input type="checkbox"/> Dismissed <input type="checkbox"/> Held for District CJ <input type="checkbox"/> Held to Answer to U.S. District AT:
Arrest Warrant	Served			<input type="checkbox"/> Waived <input type="checkbox"/> Not Waived <input type="checkbox"/> Intervening Indictment		
COMPLAINT				Magistrate's Initials		
OFFENSE (In Complaint)						



Show last names and suffix number of all defendants in indictment/information  
 Stegg-1; Simms-2; Karsab-1; EL FUSARO-1  
 DATE: 12-30-75

12-30-75 Filed indictment. Referred to Judge Pollack as superseding indictment 75 Cr 971.

01-12-76 Trial begun with jury before Judge Pollack.

01-13-76 Trial cont'd.

01-14-76 Trial cont'd.

01-15-76 Trial cont'd.

01-16-76 Trial cont'd. and concluded. Deft. found guilty on all nine counts. Defts. given 7 days for motions. Pre-sentence reports ordered. For sentence 3-19-76 at 9:45AM, Room 2704. Bail cont'd. as to both defts. Pollack, J.

3-16-76 Filed transcript of record of proceedings dated Jan 12/13/14/15/16, 1976.

3-23-76 Filed JUDGMENT (atty. present) cts 1-9: 2 yrs. impr. ea. ct. conc. serve 6 mons. remainder of sent. E.S.S. 2 yrs. prob. w/super. Deft. cont'd. on bail (\$10,000. PRB) on condition that the appeal is undertaken promptly and prosecuted without delay. Pollack, J. issued all copies.

# DOCKET ENTRIES

IV. PROCEEDINGS (continued)

V. EXCLUDABLE DELAY

01-76

Filed deft.'s notice of appeal from judgment of 3-24-76. mailed copies.

(a) (b) (c) (d)

TRUE COPY  
HOLD  
A. E. Thompson  
Clerk

B A-4

Interval (per Section 11) Start Date End Date



INDEX TO RECORD ON APPEAL  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

-----X  
UNITED STATES OF AMERICA,

-against-

A. MICHAEL STAGG, GENE L. SIMMS,  
ERNEST KASSAB, and ROBERT GEFFEN,

Defendants.  
-----X

UNITED STATES DISTRICT  
COURT FOR THE SOUTHERN  
DISTRICT OF NEW YORK

CASE NO. 75 Cr 1262

HON. MILTON POLLACK

INDEX TO THE RECORD ON APPEAL

DOCUMENTS

Certified copy of Docket Entries	A-B
Certified Copy of Indictment	1
Stagg Plea of Guilty	2
Geffen Judgment and Probation Order	3
Simms Judgment and Probation Order	3A
Simms Notice of Appeal	4
Geffen Notice of Appeal	5
Trans DTD: January 5, 1976	6
Trans DTD: January 12, 13, 14, 15 and 16, 1976	7
Stipulation Designating Exhibits to United States Court of Appeals	8
Stipulation Re: Inclusion of 75 Cr 971 as Part of Record on Appeal in this Matter	9
In the Matter of 75 Cr 971 Certified Copy of Docket Entries	
Certified Copy of Indictment	10
Simms Personal Recognizance Bond	11
Geffen Personal Recognizance Bond	12



INDEX TO THE RECORD ON APPEAL

<u>INDEX TO THE RECORD ON APPEAL</u>	<u>DOCUMENTS</u>
Kassab Personal Recognizance Bond	13
Stagg Personal Recognizance Bond	14
Simms Motion to Enlarge Jurisdiction of Bail Limits	15
Rothblatt Notice of Appearance (Geffen)	16
Gross & Keenan Notice of Appearance (Stagg)	17
Rubino Notice of Appearance (Kassab)	18
Balliro Notice of Appearance (Simms)	19
Simms Motion for Discovery: Memo Endorsed	20
Geffen Motion for Bill of Particulars and Inspection of Grand Jury Minutes and Dismissal of Indictment: Memo Endorsed	21
Simms Motion to Delete Surplusage: Memo Endorsed	22
Simms Motion for Bill of Particulars: Memo Endorsed	23
Simms Affidavit of Service: Memo Endorsed	24
Simms Motion for Relief of Prejudicial Joinder: Memo Endorsed	25
Simms Motion to Dismiss the Indictment: Memo Endorsed	26
Stagg Motion for Discovery and Bill of Particulars: Memo Endorsed	27
Stagg Memorandum in Support of Motion For Severance	28
Government's Bill of Particulars	29

INDEX TO THE RECORD ON APPEAL

<u>INDEX TO THE RECORD ON APPEAL</u>	<u>DOCUMENTS</u>
Government's Bill of Particulars	30
Notice of Settlement of Order	31
Mukasey Affidavit Re: Bisland Writ of Habeas Corpus Ad Testificandum	32
Bisland Writ of Habeas Corpus Ad Testificandum	33
Determination and Designation	34
Nolle Prosequi	35
Clerk's Certificate	36

MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

NOTICE OF MOTION

A. MICHAEL STAGG, GENE L. SIMMS,  
ERNEST KASSAB, and ROBERT GEFFEN,

Indictment #75 Cr. 971

Defendants.

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S I R S :

PLEASE TAKE NOTICE, that upon the annexed affirmation of STEPHAN H. PESKIN, the indictment, and all proceedings heretofore had herein, undersigned will move this Court before the Hon. Milton Pollack at the United States Courthouse, Foley Square, New York, New York on November 10, 1975, at 2:00 P.M. for an order granting (1) a bill of particulars pursuant to Rule 7(f), F.R. Crim. P.; (2) inspection of the Grand Jury Minutes pursuant to Rule 6 (e) F.R. Crim. P. and a dismissal of the indictment; (3) such other and further relief as to the Court may seem just and proper.

BILL OF PARTICULARS

Defendant ROBERT GEFFEN, by his attorney, moves for an order requiring the United States to furnish him a written bill of particulars as to the following matters alleged in the Indictment herein and requiring the United States to furnish the following requested



MOTION TO DISMISS

information in the said bill of particulars:

1. State whether the indictment in its final form was drafted by the prosecutor before the Grand Jury voted to return an indictment.
2. State whether any witness before the Grand Jury summarized all the testimony or events given before the Grand Jury in connection with this indictment.
3. If the answer to 2 above was in the affirmative, state whether the Grand Jury was specifically and clearly advised that it was receiving summarized or hearsay testimony.
4. Furnish the defendant or his counsel with a copy of the attendance record of each Grand Juror who voted this indictment.
5. State whether any Grand Juror who voted to return the indictment was not continuously present when all the evidence underlying the indictment was presented to the Grand Jury if not disclosed by an examination of the attendance records requested above.
6. State what, if any, legal advice was given to the Grand Jury by the prosecution herein or by the Court.
7. State whether any witness before the Grand Jury testified with regard to circumstances or transactions about which he had no personal knowledge and if so whether the Grand Jury was clearly and specifically advised that it was receiving hearsay testimony. This question is supplemental and not repetitive of question 2 above.
8. State whether the indictment in its final form was

MOTION TO DISMISS

exhibited or read verbatim to each Grand Juror before he voted the indictment.

Dated: New York, New York  
November 7, 1975

Yours etc.,

ROTHBLATT, ROTHBLATT,  
SEIJAS & PESKIN  
Attorneys for Defendant  
ROBERT GEFFEN  
232 West End Avenue  
New York, New York 10023  
212/787-7001

To: HON. THOMAS J. CAHILL  
United States Attorney  
Southern District of New York  
United States Courthouse  
Foley Square  
New York, New York 10017



MOTION TO DISMISS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA,

-against-

A. MICHAEL STAGG, GENE L. SIMMS,  
ERNEST KASSAB, and ROBERT GEFFEN,

Defendants.

AFFIRMATION  
Indictment # 75 Cr. 971

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STEPHAN H. PESKIN, an attorney duly admitted to practice before the United States District Court for the Southern District of New York affirms under penalty of perjury:

I am a member of the firm of ROTHBLATT, ROTHBLATT, SEIJAS & PESKIN, attorneys for defendant ROBERT GEFFEN and am familiar with the facts and circumstances of this matter.

Mr. Geffen was the outside accountant for Staggs Holding Company of which defendants STAGG and SIMMS were principal officers. Mr. Geffen, as accountant along with the principals was indicted for activities relating to the application for a disaster loan from the Small Business Administration and the State of Pennsylvania.

The defendant stands indicted on twelve counts in a fifteen count indictment. One count charges perjury (18 U.S.C. 1623); one count charges conspiracy (18 U.S.C. 371); two counts charge mail fraud (18 U.S.C. 1341) and aiding and abetting (18 U.S.C. 2); one count charges the making of false statements to the Small

MOTION TO DISMISS

Business Administration (U.S.C.645 [a]) and aiding and abetting (18 U.S.C.2); seven counts charge interstate transportation of stolen and fraudulently obtained property (18 U.S.C.2314) and aiding and abetting (18 U.S.C.2).

This motion is made in good faith and not for the purpose of delay. The requested items are in the possession of the Government and cannot be examined prior to trial other than by Court order.

A denial to the defendant of the information requested would constitute a denial of due process and would be contrary to the interests of justice.

In order to defend against these charges, and to avoid prejudicial surprise at the trial herein, it is essential that defendant be provided with the particulars requested in the attached notice of motion. Only if such information is provided sufficiently in advance of trial can defendant fully exercise his constitutional right to effective assistance of counsel and the right to compulsory process.

The information sought with respect to the Grand Jury is material and necessary in order for the Defendant to test the ultimate validity of the accusatory instrument. The Grand Jury system for all of its alleged benefits has certain inherent weaknesses which taint the very nature of the American adversary process. Federal and State Courts as well as State Legislatures have spoken



MOTION TO DISMISS

of the unfairness and the decay of the Grand Jury system. The Second Circuit in a series of decisions, has pointed the way. United States v. Archer, 486 F.2d 670 (1973); United States v. Estepa, 471 F.2d 1132 (1972); United States v. Fein, 504 F.2d 1170 (1974).

The information sought by Mr. Geffen is sought, not as a fishing expedition into the murky waters of the Grand Jury, but as an honest and determined effort to probe for and ferret out any taint on his right to due process of law and effective assistance of counsel under the Constitution of the United States.

It is imperative that defendant and his counsel be fully apprised of all facts and circumstances surrounding the presentation of this case to the Grand Jury. The information requested in the Bill of Particulars is necessary to make a determination as to the propriety of the Grand Jury proceedings.

Mr. Geffen is not asking the government to disclose the theory of its case or to reveal any evidence but rather is merely seeking to ascertain whether or not his due process rights were violated under the guise of Grand Jury secrecy.

The government has supplied Mr. Geffen with a copy of his Grand Jury testimony. Upon my review of that testimony, other information supplied by the United States Attorney as well as my investigation, it is my professional opinion that the indictment must be dismissed for failure to be supported by even the bare minimum of legal evidence required and because Mr. Geffen was not



MOTION TO DISMISS

afforded the opportunity to make a full and unfettered statement to the members of the Grand Jury.

At his Grand Jury appearance on June 18, 1974, Mr. Geffen offered to read a statement to the jurors detailing and clarifying his participation in the events under investigation. Mr. Geffen was not permitted to do this. Upon information and belief, this statement was read to the Grand Jury at a later date by Assistant United States Attorney Michael B. Mukasey.

It is a primary function of the Grand Jury to inquire into and be presented with facts so that it may determine whether a crime was committed. Dolan v. United States, 218 F. 2d 454 (8th Cir. 1955) cert. denied 349 U.S. 923 (1955). Mr. Geffen's statement contained such facts.

He should have been permitted to personally read the statement to the Jury. Vocal inflection, emphasis, asides or omissions on the part of the Assistant United States Attorney could radically change the effect and import of portions of the statement.

Mr. Geffen seeks dismissal of the indictment based on his being denied due process protection. In the alternative he seeks inspection of the Grand Jury minutes. Specifically, he seeks the testimony of Assistant United States Attorney Mukasey in reading the above mentioned statement to the Grand Jury.

As to Mr. Mukasey's statements, no argument can successfully be made that there is a need for secrecy. He read a statement

MOTION TO DISMISS

prepared by Mr. Geffen and disclosure of the minutes of that portion of the Grand Jury proceedings can in no way jeopardize the sanctity of the Grand Jury chamber.

In addition to showing that there is no need for secrecy, Mr. Geffen also argues that he has a particular purpose in seeking Mr. Mukasey's testimony, to wit; whether or not his own words were distorted or otherwise improperly used against him. Such a two pronged showing is sufficient for the granting of disclosure of Grand Jury minutes. United States v. Bringer, 390 F. Supp. 1187, (D.C. Wis. 1975).

WHEREFORE, I respectfully request that the within motion be granted in all respects.

Dated: New York, New York  
November 7, 1975

---

STEPHAN H. PESKIN



1 he was.

2  
3 What, ladies and gentlemen, was the cross-examina-  
4 tion of Frank De Angelis on that critical statement? I am  
5 gong to tell you a little bit, ladies and gentlemen, about  
6 the way this court works, and about the way trials work, and  
7 what the government's obligation is.

8 You heard these witnesses cross-examined with  
9 documents. Sometimes they are grand jury testimony, state-  
10 ments to the FBI, etc. Well, the government is required,  
11 under Title 18, Section 3500, to turn over all of the prior  
12 statements of its witnesses to the defendants so that they  
13 can use it for cross-examination, and that is fair. They  
14 ought to know what those people said on past occasions.

15 MR. ROTHBLATT: Your Honor, I object. That was  
16 handed to us on the eve of the testimony of the witnesses,  
17 and we didn't have time to study it.

18 MR. RUBINO: Yes, your Honor.

19 THE COURT: Mr. Rothblatt and Mr. Rubino, I am  
20 surprised that you said that. I think that you have had those  
21 documents long prior to the trial.

22 MR. ROTHBLATT: Not the essential witnesses, no,  
23 your Honor. We were handed a batch of testimony.

24 THE COURT: You were handed the documents as  
25 required by law, and you have the documents.<sup>6</sup> That is the



1 bjmds 22

2 end of this.

3 I don't want you to interrupt the summation. You  
4 are deliberately interrupting the summation. I ask you to  
5 desist.

6 MR. RUBINO: That was not the basis for my objec-  
7 tion. I object to references to those papers or statements,  
8 your Honor.

9 THE COURT: References?

10 MR. MUKASEY: The government has a right to have  
11 the jury informed.

12 THE COURT: I overrule that objection. The  
13 jury is entitled to know that the defendants' prior state-  
14 ments may be turned over to the defendants in advance of  
15 the trial which they were here.

16 MR. MUKASEY: Ladies and gentlemen, I am going  
17 to read you the cross examination of the three lawyers in  
18 this case who are all professionals and all had that 3500  
19 information in front of them of Frank De Angelis.

20 "MR. ROTHBLATT: I have no questions.

21 "MR. RUBINO: I have no questions.

22 "MR. BAILLIRO: I have no questions."

23 Don't you seriously think if there was any  
24 opportunity to tear Frank De Angelis up, it would have been  
25 done.

NOTICE OF APPEAL  
UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

Docket Number 75/971

A. MICHAEL STAGG, GENE L. SIMMS,  
ERNEST KASSAB, and ROBERT GEFFEN

Milton Pollack  
(District Court Judge)

Defendants.

NOTICE OF APPEAL

Notice is hereby given that ROBERT GEFFEN appeals to  
the United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ order ☐ other  
(specify) \_\_\_\_\_ entered in this action on March 23, 1976  
(Date)

Date March 30, 1976  
To:

Address

ROTHBLATT, ROTHBLATT,  
(Counsel for Appellant)  
SEIJAS & PESKIN  
232 West End Avenue  
New York, New York 10023  
212-787-7001

Robert P. Fiske, Jr.  
U.S. Attorney, Southern District of New York

Robert Geffen  
216 Westchester Avenue Phone Number 787-7001  
Portchester, New York

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

► **QUESTIONNAIRE**

- ☐ I am ordering a transcript  
☒ I am not ordering a transcript  
Reason:  
☒ Daily copy is available  
☐ U.S. Attorney has placed order  
☐ Other. Attach explanation

► **TRANSCRIPT ORDER**

- Prepare transcript of  
☐ Pre-trial proceedings  
☐ Trial  
☐ Sentence  
☐ Post-trial proceedings

► DESCRIPTION OF PROCEEDINGS  
FOR WHICH TRANSCRIPT IS  
REQUIRED (INCLUDE DATE)

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ► Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature [Signature]

DATE 3/30/76

► **COURT REPORTER ACKNOWLEDGEMENT**

To be completed by Court Reporter and  
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number  
of pages.

Date \_\_\_\_\_

A-18<sup>ure</sup>

(Court Reporter)

ORIGINAL



STATE OF NEW YORK )  
COUNTY OF NEW YORK) ss.:

JULIO VALETTI, JR., being duly sworn,  
deposes and says that deponent is not a party to the action,  
is over 18 years of age and resides at 2742 PITKIN AVE  
BROOKLYN, N.Y.

That on the 21 day of MAY, 1976,  
deponent personally served the within BRIEF AND APPENDIX  
OF DEFENDANT APPELLANT ROBERT GETTEN  
upon the attorneys designated below who represent the  
indicated parties in this action and at the addresses below  
stated which are those that have been designated by said  
attorneys for that purpose.

By leaving 2 true copies of same with a duly  
authorized person at their designated office.

~~By depositing~~ true copies of same enclosed  
in a postpaid properly addressed wrapper, in the post office  
or official depository under the exclusive care and custody  
of the United States post office department within the State  
of New York.

Names of attorneys served, together with the names  
of the clients represented and the attorneys' designated  
addresses.

ROBERT FISKE, JR.  
U.S. ATTORNEY - SOUTHERN DISTRICT OF NEW YORK  
ATTORNEY FOR APPELLEE  
U.S. COURTHOUSE - FOLEY SQUARE  
NEW YORK, N.Y. 10007

Sworn to before me this

21<sup>st</sup> day of May

Julio Valletti, Jr.

1976  
Michael DeSantis

MICHAEL DeSANTIS  
Notary Public, State of New York  
No. 03-0930908  
Qualified in Bronx County  
Commission Expires March 30, 1977